



**4910-06-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

**[Docket No. FRA-2012-0033]**

#### **Notice of the Buy America Waiver Request for Vossloh 101-LV Concrete Ties**

**AGENCY:** Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

**ACTION:** Notice of Buy America waiver request and request for comment.

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**SUMMARY:** FRA is issuing this notice to advise the public that the Burlington Northern Santa Fe Railway Co. (“BNSF”) has submitted to FRA through or with the support of the Washington Department of Transportation (“WSDOT”), the Illinois Department of Transportation (“IDOT”), the Texas Department of Transportation (“TxDOT”), and the California Department of Transportation (“Caltrans”) a waiver request from FRA’s Buy America Act requirements for the purchase of Vossloh 101-LV concrete ties, which contain certain components not manufactured in the United States. In furtherance of four FRA High-Speed Intercity Passenger Rail (“HSIPR”) grants, BNSF, as the railroad infrastructure owner, will construct certain rail project elements that consist of the installation of Vossloh 101-LV concrete ties. FRA has received this request from the four States for the following projects: (a) the Pacific Northwest Rail Corridor Program (b) the Amtrak Quad Cities to Chicago Service Initiation Project, (c) the Tower 55 At-Grade Improvement Project, and (d) the LA to Fullerton Triple Track – Segment 7 Project.

**DATES:** Written comments should be provided on or before [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments: Comments related to Docket No. FRA-2012-0033 may be submitted by any of the following methods:

(1) Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493-2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001; or

(4) Hand Delivery: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Railroad Administration” and include docket number FRA-2012-0033. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or **Error! Hyperlink reference not valid.** you may visit <http://www.dot.gov/privacy.html>.

Docket: For access to the docket to read comments received, go to <http://www.regulations.gov> at anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Ms. Linda Martin, Attorney-Advisor, FRA Office of Chief Counsel, Mail Stop 10, West Building 3<sup>rd</sup> Floor, Room W31-304, 1200 New Jersey Avenue, SE. Washington, DC 20590 (telephone 202-493-6062) or via e-mail at [Linda.Martin@dot.gov](mailto:Linda.Martin@dot.gov).

**SUPPLEMENTARY INFORMATION:**

FRA projects funded through the American Recovery and Reinvestment Act of 2009 and the Transportation, Housing and Urban Development and Related Agencies Appropriations Act for 2010 (Div. A of the Consolidated Appropriations Act, 2010 (Pub. L. No. 111-117) (“FY 2010 DOT Appropriations Act”), must comply with the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”) Buy America provisions (49 U.S.C. 24405(a)). Section 24405(a)(1) authorizes the Secretary of Transportation (“Secretary”) to obligate grant funds only if the steel, iron, and manufactured goods used in the project are produced in the United States. However, sec. 24405(a)(2) also permits the Secretary to waive the Buy America requirements if he finds that: (A) applying paragraph (1) would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

Before determining whether it is appropriate to waive the Buy America provision, sec. 24405(a)(4) requires that the Secretary first provide the public with an opportunity to

comment. If after receiving public comment, the Secretary decides to grant the waiver, a detailed written justification for the decision must be published in the Federal Register.

The purpose of this notice is to inform the public that FRA has received a waiver request for the Vossloh 101-LV concrete tie system, which contains certain components not manufactured in the United States, and to solicit public comments on the request. BNSF as the owner of the infrastructure that will be improved by the HSIPR grants proposes to install approximately 171,000 Vossloh 101-LV concrete ties for the following projects:

(a) the Pacific Northwest Rail Corridor Program (b) the Amtrak Quad Cities to Chicago Service Initiation Project, (c) the Tower 55 At-Grade Improvement Project, and (d) the LA to Fullerton Triple Track – Segment 7 Project. Transmittals in furtherance of this request have been submitted to FRA by WSDOT, IDOT, TxDOT, and Caltrans.

The foreign components of the concrete tie are limited to the dowel inserts and SKL-30 tension clamps. The function of the dowel insert is to provide housing for the lag screw that fastens the SKL-30 tension clamps to the tie. The SKL-30 tension clamps hold the rail to the tie and prevent lateral and longitudinal movement of the rail. BNSF and the identified States seek the waiver pursuant to sec. 24405(a)(2)(B) because they believe that for the reasons set forth in the request, that suitable materials are not reasonably available in the United States and therefore a waiver from FRA's Buy America requirement is appropriate.

The request in its entirety is available on FRA's website at <http://www.fra.dot.gov/Pages/251.shtml>. In order to completely understand the facts surrounding the request, FRA seeks comment from all interested parties regarding the availability of suitable domestically manufactured products, any public interest concerns, or the potential Buy America waiver.

Issued in Washington, DC on April 4, 2012.

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Corey Hill  
Director, Rail Project Development and Delivery,  
Federal Railroad Administration.

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